



## Yellowstone County Zoning Commission Minutes for the Meeting of Monday February 14, 2005

The County Zoning Commission met on Monday February 14, 2005 in the large conference room on the 4<sup>th</sup> floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:00 p.m.

Commissioners and Staff		1/10/05	2/14/05	3/14/05	4/11/05	7/11/05	8/8/05	9/12/05	10/10/05	11/14/05	12/12/05
Oscar Heinrich	Chairman	<b>CANCELLED</b>	1								
Jerome Musselman	Vice-Chair		1								
Al Littler	Commissioner		1								
Joan Hurdle	Commissioner		1								
Dennis Cook	Commissioner		1								
Nicole Cromwell	Planner II/ Zoning Coordinator		1								
Wyeth Friday,	Planner I		1								
Elizabeth Allen	Acting Planning Clerk		1								

**Chairman Heinrich** introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator  
Wyeth Friday, Planner I  
Liz Allen, Acting Planning Clerk

### **ANNOUNCEMENTS:**

Chairman Heinrich read the following announcements:

Board and Commission Training on Friday February 18, 2005 3<sup>rd</sup> floor of the Parmly Library from Noon to 4 pm.

### **PUBLIC COMMENT**

**Chairman Heinrich** asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public

may be heard on any subject that is not on the agenda, and that the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

There were none.

**Approval of Minutes:**

Approval of the minutes of the meeting of December 13, 2004

***On a motion by Chairman Heinrich, seconded by Commissioner Littler, and passed by a 5-0 voice vote, the minutes of December 13 2004, were approved with no changes.***

**Public Hearings:**

**Chairman Heinrich** reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of March 1, 2005.

**Item #1 Special Review #298**

**Ms. Cromwell** read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of conditional approval. She explained the reasons for the staff decision.

2860 Old Hardin Road, Lockwood, for an All Beverage Liquor License with gaming, Atkins Sub, Block 1, Lot 2, TaxID C12648, Zoned Entryway Light Commercial. Applicant is Chris Bakwin and the agents are Connie Mankin and Chris Nelson.

**REQUEST**

A special review to allow an on-premise all beverage liquor license with gaming in a Entryway Light Commercial zone on property located at Lot 2, Block 1 of Atkins Subdivision. The property is located at 2860 Old Hardin Road in a tenant space of the Lockwood Center Mini-Mall. Planning staff is recommending conditional approval of this application.

**APPLICATION DATA**

OWNER:	Chris Bakwin
AGENT:	Connie Mankin and Chris Nelson
CURRENT ZONING:	Entryway Light Commercial
LEGAL DESCRIPTION:	Lot 2 of Block 1 Atkins Subdivision
ADDRESS:	2860 Old Hardin Road
SIZE OF PARCEL:	.95 acres or 41,625 square feet
EXISTING LAND USE:	Lockwood Center Mini-Mall
PROPOSED LAND USE:	same with new Casino of 2957 square feet

### **APPLICABLE ZONING HISTORY**

Special Review #198: Conditionally Approved March 26, 1992 for an all beverage liquor license on Tract 1 of C/S 2538 2747 Old Hardin Road.

Special Review #235: Approved January 30, 1997 for the expansion of an existing all-beverage liquor license on C/S 2344 (Flying J Truck Plaza).

Special Review #255: Approved July 26, 1999 for a building to exceed 3,000 square feet in the Entryway Light Commercial zone on Lots 2-4, Block 1 of Atkins Subdivision (Subject property).

### **Discussion:**

**Chairman Heinrich** questioned the 10% addition to square footage of the area of the proposed casino.

**Ms. Cromwell** explained that the Unified Zoning Regulations allow special review approvals to increase the building square footage by up to 10 percent without requesting an additional special review approval.

*The public hearing was opened at 4:11 p.m.*

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #298.

### **Applicant:**

**Chris Nelson** (agent) explained that because this is an existing structure there would be no environmental or ecological affects. He also explained there should be no effect on surrounding properties since the Lockwood Center Mini-Mall was completely developed and the project would include only an interior remodel. The casino would be a convenience for the residents of Lockwood.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #298.

### **Proponents:**

**Cannon Gunn**, 248 Juniper Drive, was in favor of the Special Review because of the convenience to Lockwood residents to be able to buy/carry out liquor. This would be an improvement from having to go into town for any needs.

**Kevin Flack**, 3306 Coulson Rd, felt that this would be a nice addition to the neighborhood and would be open during time when other businesses in the area are not.

**Randy Becker**, 640 Twilight Dr., liked the convenience of not having to come all the way into town to buy liquor or gaming and felt the proposed business would be a nice place to meet with friends.

**Corey Wang**, 45 Eagle Cliff Meadows, felt it would be nice to have a new place to eat, meet with friends and business associates and it would be convenient for those in the Lockwood area.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #298.

**Opponents:**

**Sandra Wolf**, 2942 Old Hardin Rd, is very opposed to this Special Review. She feels that this would be a danger, and there are already a high number of drunk drivers and speeding vehicles on that road. She also has a problem with people turning around on her bridge, which is very dangerous. **Ms Wolf** is afraid for children and animals in the area. She feels that too many people drive that road as it stands.

**Rebuttal:**

**Chris Nelson** would like the commission to know that the nearest all beverage Liquor license is 3.2 miles to the west and the proposal should have no significant effect on the neighboring properties or the traffic on Old Hardin Road.

**Questions:**

**Commissioner Hurdle** would like to know if an all beverage liquor license always has a “carry out” provision for an occasional sale for off-premise consumption.

**Mr. Nelson** responded yes.

**Commissioner Hurdle** asked what kind of sewer system is present.

**Mr. Nelson** responded that it is a septic system.

**Commissioner Hurdle** questioned what type of business is presently at that location.

**Ms. Mankin** responded that it is currently retail – a closed hair salon and clothing store.

**Commissioner Hurdle** questioned as whether the change in business would overload the current septic system.

**Ms. Mankin** responded that they had made no change in restrooms and because they aren’t planning on serving food they expect no significant increase in septic system use.

**Commissioner Littler** asked whether the staff checked with the DEQ for this septic system

**Ms. Cromwell** responded that local City/County Health had reviewed the request and noted that any changes to the floor plan or equipment would need to be pre-approved by their department. DEQ review has not been done. When this project comes through as a final plan the septic system will be looked at.

**Commissioner Hurdle** questioned if the remodel will be finished before the DEQ has checked it suitability for this use.

**Ms. Cromwell** the septic system check and remodel will happen together.

**Chairman Heinrich** brought the meeting back to order.

*The public hearing was closed at 4:22p.m.*

**Discussion:**

**Commissioner Hurdle** does not feel that this is a good use of this space.

**Motion:**

*On a motion by Commissioner Littler, seconded by Commissioner Cook and passed by a 4-1 voice vote, with Commissioner Hurdle voting against, a recommendation for conditional approval of Special Review #298 with an amendment to the third condition be made so that*

*it read “the septic system will be sufficient” will be forwarded to the BOCC at their meeting of March 1, 2005.*

1. The approval is for Lot 2 of Block 1 of Atkins Subdivision.
2. The casino shall be limited to a maximum gross floor area of 3,258 square feet.
3. The casino will require prior approval of the City-County Health Department for floor, equipment plans and review of septic system.
4. The proposed casino shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses.

#### **Item #2 Zone Change #577**

**Mr. Friday** read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning surrounding the subject property. He said staff is forwarding a recommendation of denial. He explained the reasons for the staff decision.

3030 Wise Lane, a zone change request on the front 2.5 acres of 10 acre parcel, from Agriculture Open Space to Community Commercial, Tract 3 of C/S 3201, Tax ID D11762. Applicant is Art Staudt and Dan Wyrwas is the agent.

#### **REQUEST**

This is a zone change request from Agricultural Open Space to Community Commercial on a portion of unplatted land on 2.5 acres of the 10 acre Tract 3 of Certificate of Survey 3201. The property is located at 3030 Wise Lane. The Planning staff is forwarding a recommendation of denial for this application.

#### **APPLICATION DATA**

OWNER:	Art Staudt
APPLICANT:	Danny Wyrwas
LEGAL DESCRIPTION:	2.5 acres of the 10 acre Tract 3 of Certificate of Survey 3201
ADDRESS:	3030 Wise Lane
CURRENT ZONING:	Agricultural Open Space
PROPOSED ZONING:	Community Commercial
EXISTING LAND USE:	A 5,000-square-foot shop occupied by a fence fabrication business
SIZE OF PARCEL:	2.5 acres to be re-zoned, 7.5 acres to remain Ag Open Space

#### **APPLICABLE ZONING HISTORY**

This property’s violation of the allowed uses under the zoning regulations has been the subject of correspondence from the County Code Enforcement Office since 1999 and the subject of complaints filed with the County Code Enforcement Office in 2001 and 2004. The timeline of correspondence is as follows:

**January 11, 1999:** Property Owner Art Staudt was sent a letter by the County Code Enforcement Office clarifying the allowed uses of his property in relation to a 5,000-square-foot building he was constructing on the site. At that time, Mr. Staudt appeared to be

considering the use of the building to store dog and cat food for distribution. He was informed that this was not an allowed use in the Agricultural Open Zoning District.

**February 7, 2001:** Property Owner Art Staudt was sent a letter by the County Code Enforcement Office informing him that it had received complaints regarding the use of a building at 3030 Wise Lane for the operation of a pet food distribution business. A business at that address was listed in the Yellow Pages as Doc's Distributing – Diamond Pet Food. Mr. Staudt was informed that he was in violation of the Unified Zoning Code Section 27-305-Allowed Uses. He was directed to apply for a zone change for the property by March 5, 2001.

**April 14, 2004:** Property Owner Art Staudt was sent a letter by the County Code Enforcement Office informing him that it had received complaints regarding the use of a building at 3030 Wise Lane for the operation of a vinyl siding and fence business. A business at that address was listed in the local phone book as Absolute Vinyl. Mr. Staudt was informed that he was in violation of the Unified Zoning Code Section 27-305-Allowed Uses. He was directed to cease the business operation or apply for a zone change for the property by May 3, 2004.

**June 10, 2004:** Property Owner Art Staudt was sent a letter by the County Code Enforcement Office following up on the April 14, 2004 notice regarding the illegal use of his property for a vinyl fabrication business. A re-inspection of the property on June 9, 2004 had revealed that the business was still in operation at 3030 Wise Lane. Mr. Staudt was given until July 6, 2004 to cease the business operation or apply for a zone change.

**October 14, 2004:** Property Owner Art Staudt was sent a letter by the County Code Enforcement Office following up on the June 10, 2004 letter and instructing him to immediately cease the business operation or apply for a zone change or the case would be forwarded to the County Attorney for prosecution.

**December 15, 2004:** Absolute Vinyl owner Danny Wyrwas, who was leasing the property from owner Art Staudt, submitted a zone change application to the Planning and Community Services Department for a zone change on a portion of the subject property from Agricultural Open Space to Community Commercial zoning.

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #577.

*The public hearing was opened at 4:33 p.m.*

**Applicant:**

**Danny Wyrwas**, owner 2732 Avalon, **See Attached Letter**

**Commissioner Hurdle** questioned the applicant if he actually wanted the zone change.

**Mr. Wyrwas** response was no but it seemed to be the only way for him to bring the property into compliance.

**Commissioner Hurdle** questioned the applicant if he would like to keep the zone as it is now.

**Mr. Wyrwas** responded that he only wished to be allowed to have his business and eventually a home on the property he had chosen.

**Chairman Heinrich** called the meeting back to order.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #577.

**Proponents:**

**Chairman Heinrich** noted that **Mr. Brosovich** had contacted him at his home to speak about this matter but because the **Chairman** felt that this would be ex parte communication and bring the legality of this hearing into question he declined to speak of this matter with **Mr. Brosovich**.

**Brosovich**, 1550 Poly Drive, friend of Danny Wyrwas. **Mr. Brosovich** claimed he had helped the applicant find a home and storage site. His concern is that the prior landowner's problems with Code Enforcement are affecting his ability to get a zone change. After the applicant had meetings with first Mr. Bollman (of the Planning Department), then Ms. Cromwell (also of the Planning Department) it was decided that Community Commercial (SIC Code 5260 for the proposed use) would be the best zoning of this land considering what the applicant wants to do with the property. **Mr. Brosovich** claimed that none of the neighbors have a problem with this. **Mr. Brosovich** also stated that there would be no retail usage, no signage, and no traffic increase in the area as all the retail selling is done on the sight where the fencing is to be installed. Commissioner Hurdle's statement that the applicant didn't want to rezone is correct. The applicant only wishes to use the property for fabrication and storage of fencing. **Mr. Brosovich** also stated that because Wise Lane is a north/south arterial commercial property is best suited for that location.

**Commissioner Hurdle** questioned whether the frontage property on Wise lane is Commercial.

**Mr. Brosovich** stated that he didn't say it was commercial he was only commenting on the fact that Wise Lane is an arterial.

**Commissioner Hurdle** questioned how far south of this property is the river.

**Ms. Cromwell** responded that it is a half mile away.

**Commissioner Hurdle** questioned whether the property lies in the floodplain.

**Ms. Cromwell** stated that it wasn't.

**Ed Workman**, 3247 Flora Ave, Friend of both the applicant and Mr. Brosovich. He expressed his belief that this land will change as many land uses have changed; there are many large commercial-type buildings on Wise Lane. He mentioned the new furniture store at the intersection of Wise Lane and the Laurel Frontage Road and he mentioned a boat repair/storage business north of the subject property on Wise Lane. He would like the Commission to vote yes for this request. He finds it logical.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #298.

**Opponents:**

**Dan Hickey** 3224 Wise Lane speaking for himself, his wife and his mother who lives at 3075 Ave. C. **Mr. Hickey** lives just south of the proposed zone change and is opposed to commercial development on Wise Lane and has been for years. **Mr. Hickey** does not find this proposal consistent with the Growth Policy Plan from 2003. The Policy states a need for predictable land use patterns. **Mr. Hickey** doesn't feel this application fit that statement. The second reason is that while Mr. Wyrwas only wishes to store fencing at this time, if he were to move then the neighborhood would not like to be stuck with a community commercial zone where a multitude of business that would not fit into the neighborhood very well could be located. **Mr. Hickey** is also opposed to this application because the portion of land is not legally describable. **Mr. Hickey** also expressed concern that very little of Yellowstone County is zoned and so he would like to know why this is being zoned when just south of this property is space that could be used and does not need to be zoned. **Mr. Hickey** is also opposed to zoning of small increments of larger tracts of land. He said he thought zoning should fit with legally described properties and not be done to create zoned areas that have no legally defined boundaries.

**Commissioner Littler** (referring to photo's of business and building near the location) questioned if the green building in the photo belonged to Mr. Hickey and what is it used for?

**Mr. Hickey** responded that he uses the building for storage of tractors and a boat.

**Commissioner Littler** then stated that Mr. Hickey's storage in his building was not unlike what Mr. Wyrwas was proposing.

**Commissioner Hurdle** asked what the square footage of Mr. Hickey's shop.

**Mr. Hickey** responded that he didn't know.

**Ken Frasier** 3185 Wise Lane, showed some other residences in the area on the overhead projector. He said he had built a home on his property about 1 ½ years ago. He said that when he first moved into the neighborhood he found that the warehouse was zoned wrong. While he would like the applicant as a neighbor he only wants him as a residential neighbor. He doesn't think that it is right to have Community Commercial in the area.

#### **Rebuttal:**

**Dan Wyrwas** stated that he is only trying to change the zone because that is what the Planning Department told him to do. He pointed out many instances of Commercial use in the neighborhood. He only wants to have his business and home. He doesn't wish to upset his neighbors.

*The public hearing was closed at 4:59p.m.*

**Commissioner Littler** stated that he has problem with the thought that commercial zoning is dirty and Agricultural is hallowed. He sees lots of Agricultural Commercial. He has problems seeing why Open Agricultural is so sanctimonious. He doesn't understand why people don't wish to have this zoning (community commercial). However, Littler said doesn't like the idea



of changing the zoning of this property to commercial in this area. He questioned why this shop cannot be classified as Agricultural Commercial since it makes Agricultural fencing. He also questions how this application got this far and why is this property being cut in pieces.

**Mr. Friday** commented that the idea was to keep the commercial zoning only were the 5,000 sq foot building is. **Mr. Friday** stated that he doesn't find the proposal to rezone a portion of a larger tract a good practice.

**Ms. Cromwell** stated that a property to the north has been divided in a similar way. That Property was divided for the same reasons that we have suggested the division of this property. The Planning Department asked how much of this business is agricultural because there are many commercial uses allowable in Agricultural. However, there was no way to categorize the fencing business as an Agricultural business. Because the applicant didn't want to get involved with a criminal prosecution process the Planning Department proposed Community Commercial because it seemed the easiest way to be able to allow the fence business to remain on the property.

**Mr. Friday** clarified that many of these businesses near this one are in process of being processed by Code Enforcement.

**The group talked about Code Enforcement and what is going on with the businesses near this property.**

**Commissioner Littler** questioned whether this could have been handled by a Special Review.

**Ms. Cromwell** responded yes, but the Special Review follows the property and it did not appear that the right category for a fence business use appeared in the special review matrix.

**Chairman Heinrich** questioned what can be done to make this work for the applicant.

**Ms. Cromwell** stated that the Planning Department has looked through all of the available options.

**Commissioner Littler** questioned whether this could be considered an Agricultural business since 25% of the income comes from AG-Fencing

**Ms. Cromwell** stated that there is no precedent.

**Commissioner Littler** questioned whether the fencing for orchards would contribute to that income total.

**Ms. Cromwell:**

**Chairman Heinrich** stated that the neighbors do not like the idea of having Community Commercial in there neighborhood but they do not dislike what he is doing. We have to find a way to make the whole area happy. **Chairman Heinrich** questioned whether these other businesses in the area have code enforcement cases against them.

**Mr. Friday** explained that Code Enforcement works on a complaint only basis and if only one business has a complaint filed then only one is prosecuted.

**Ken Frasier** questioned whether it is possible to allow the zone change on the condition if the property was ever sold the zoning would return to Open Agricultural.

**Mr. Hickey** stated that he was dead set against a zone change. He has no problem with the applicant with using the building. He doesn't want this to turn into a non-conforming use. He understands that nothing is more aggravating than zoning but he is very concerned with the land use.

**Mr. Frasier** said that Open Agricultural has a 10 acre limitation. He questioned if there is less than 10 acres then would you be able to use that property.

**Mr. Borvich** stated to Mr. Hickey the applicant is willing to work something out.

**Commissioner Hurdle** stated that it is clear that a zone change is not the right thing to do for this property and is inconsistent. She also stated that this could never be described as orderly development. The city has described areas of annexation for the next 30 years and this property is not mentioned. At this time this location is not a place where we do not want to encourage Commercial Development. **Commissioner Hurdle** made a motion to deny Zone Change #577. The motion was not seconded and died.

**The Commission talked about tabling the motion and turning it into a special review or giving the Planning Department more time to find a better solution.**

**Chairman Heinrich** stated that he really wanted to find a way so that this would work for the applicant and all the people living in the surrounding areas. He also stated that there had to be a way to keep the unity of the neighborhood and to keep all involved happy. He suggested that the Planning Department meet and contact all the participants of today's commission to find an equitable solution for all.

**Motion:**

***On a motion by Commissioner Littler, seconded by Commissioner Musselman, and passed by a 5-0 voice vote, a recommendation to table the Zone Change #577 for thirty-days for the staff to find a different way to make this possible with a legal opinion.***

*The Public portion of the meeting ended at 5:33*

**Other Business:**

Election of officers

***On a motion by Commissioner Hurdle and passed by a 5-0 voice vote, Oscar Heinrich was elected County Zoning Commission Chairman.***

*On a motion by Commissioner Hurdle, and passed by a 5-0 voice vote, Jerome Musselman was elected County Zoning Commission Vice-Chairman.*

**Adjournment:**

The meeting was adjourned at 5:34 p.m.

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**Oscar Chairman Heinrich, Chairman**

**ATTEST:**

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**Elizabeth Allen, Acting Planning Clerk**